

## **Issues Raised related to the Request from the Makah Tribal Council To the Washington State Department of Transportation.**

The Makah Nation is exploring using the scenic byway concept to help implement tribal economic development and tourism initiatives. In the summer of 2001, the Tribal Council and planning staff requested information from the Washington State Department of Transportation (WSDOT) about the requirements, benefits and schedules for the state and national scenic byway programs.

The Tribe is currently in the process of determining which roads within the reservation boundary to designate as Tribal Scenic Byways. They have also requested that if these roads receive tribal designation, they may become part of the state system of scenic byways.

The Tribe was previously involved in the planning process for designating the National Scenic Byway along SR 112 – the Strait of Juan de Fuca Highway. Extending that designation to scenic byways onto the reservation is one option the Tribe has considered.

Extension of an existing National Scenic Byway is something that has not occurred before in Washington State and the extension of SR 112 has brought up a number of issues. Heritage Corridors Program staff has prepared the following question and answer summary in an effort to provide information about these issues to the Makah Tribe, the SR 112 byway communities, the Transportation Commission, and the general public.

**At this time, the Tribe will not be applying for designation as an extension of the Strait of Juan de Fuca National Scenic Byway on SR 112.** The Tribe has decided to pursue only tribal and state scenic byway designation. WSDOT and the Tribe are working together to provide an opportunity for public involvement regarding inclusion of Tribal Scenic Byways as part of the state recognized scenic byway system.

For additional information about the scenic byway designation process in general or the Makah designation process, contact Judy Lorenzo, Manager, Heritage Corridors Program, Paula Connelley, Scenic Byway Lead at (360) 705-7302, or Colleen Jollie, WSDOT Tribal Liaison, (360) 705-7025. Or email [LorenzJ@wsdot.wa.gov](mailto:LorenzJ@wsdot.wa.gov), [ConnellP@wsdot.wa.gov](mailto:ConnellP@wsdot.wa.gov), or [JollieC@wsdot.wa.gov](mailto:JollieC@wsdot.wa.gov).

### **1. Q: What is the difference between a tribal, state or national scenic byway?**

**A:** The primary difference is which jurisdiction takes official action to designate the corridor as a scenic byway. A secondary difference is the criteria each jurisdiction applies in the process of designation.

By virtue of their status as a sovereign nation with rights to self govern by treaties with the United States Government, the Makah have the right to select which tribal roads will be

designated tribal scenic byways.<sup>1</sup> They are responsible for developing their own criteria and rules for governing them.

The Washington State Legislature created the state scenic byway system by establishing RCW Chapter 47.39. In 1999, The Legislature subsequently, delegated responsibility to WSDOT and the Transportation Commission to develop criteria and a process for designation of corridors that are officially recognized as part of the state scenic byway system.

The federal Secretary of Transportation is responsible for designating National Scenic Byways in concurrence with the Secretary of the Interior and the Secretary of the Department of Agriculture. The Federal Highway Administration (FHWA) administers the national program. Criterion for national designation was established in a federal register in 1991 as a part of the Intermodal Surface Transportation Equity Act (ISTEA). National Scenic Byways are nominated and selected from roadways officially recognized as part of state scenic byway systems.

**2. Q: What has the Makah Tribe requested from WSDOT and the Transportation Commission?**

A:

Recognition by the Transportation Commission accepting selected Tribal roads as a part of the state system of scenic byways.

Technical assistance with:

- Understanding the state and federal designation process
- Applying for a National Scenic Byway grant for planning activities to supplement the existing SR 112 Corridor Management Plan
- Applying for extension of national designation of SR 112 onto selected tribal roads

**3. Q: Does a tribal scenic byway need to be a part of the state system of scenic byways in order to apply for national designation?**

A: No. With their status as a tribal government the Makah Nation can apply for designation directly to FHWA. However, the Tribe must have written concurrence from the WSDOT Scenic Byways Manager to apply.

**4. Q: Why does the Makah Tribe want to have their tribal scenic byway(s) become a part of the state system?**

A: The primary benefit for the Makah is the value of WSDOT becoming a partner as the Tribe seeks application for National Scenic Byway planning grant funds, and works to supplement the existing Corridor Management Plan. In addition, the WSDOT offers

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<sup>1</sup> Treaty of Neah Bay, 1855

technical assistance and promotion of all state designated byways. State scenic byways are also eligible for promotion on the National Scenic Byway web site.

**5. Q: Is a Corridor Management Plan required for a route to be designated as a state scenic byway?**

A: No. There are specific requirements listed in *Washington's Scenic Byway Designation Process Report 2001-2002*, but the state program recognizes that it takes seed money to help complete a Corridor Management Plan. Being part of the state scenic byway system allows a corridor group to apply for the planning funds to complete a Corridor Management Plan.

**6. Q: Are the requirements for extending the existing SR 112 National Scenic Byway different then that of establishing a new one?**

A: Yes. Becoming an extension of an existing National Scenic Byway will require the Tribe to concur with the existing Corridor Management Plan and be willing to pursue grant funds to pay for an amendment to that expands that plan. If the Tribe choses to pursue designation as a new and separate National Scenic Byway, they would be required to publish a new Corridor Management Plan.

**7. Q: What are the public involvement requirements for seeking state and national designation?**

A: The local byway organization and jurisdictions governing the road establish the methods that provide citizens in the communities along the corridor an opportunity to voice their opinions about designation. The WSDOT and the Transportation Commission recognize that there may be "gaps" along a corridor where opposition to the designation exists. These gaps are allowable for a route to be designated, either at the state or national level. However, these areas would then become ineligible to apply for national scenic byway grant funds.

Prior to applying for designation, if a community expresses concerns about becoming designated, it is the responsibility of the WSDOT and the byway organization to address these concerns in the Corridor Management Planning process.

In the case of tribal scenic roads, the tribal government determines the public involvement process. In order for the existing SR 112 National Scenic Byway to be extended, the Makah Tribe must first demonstrate that the tribal community and council accept the existing Corridor Management Plan. The Tribe must be willing to pursue National Scenic Byway planning grant funds to amend the Corridor Management Plan to cover the reservation routes in greater detail. This planning process provides for considerable public involvement within the reservation community and along the existing SR 112 National Scenic Byway.

Public comments by those not residing in the byway communities are recorded and discussed as part of the corridor management plan public involvement process. The byway organization, landowners along the byway, and governing jurisdictions are responsible for

determining how much public involvement is necessary to sufficiently communicate all issues to the WSDOT.

It is not a requirement that all issues be resolved prior to state or national designation. It is not possible to reach consensus on every issue and the WSDOT encourages byway organizations to focus on issues one step at a time, and begin by looking for common ground.

**8. Q: What are the safety requirements of a National Scenic Byway?**

A: A National Scenic Byway must be able to accommodate 2-wheel drive vehicles. A paved roadway surface is desirable but not required.

**9. Q: What are the rules about seasonal or periodic road closures?**

A: Both state and nationally designated roads can be closed on a seasonal or as needed basis, determined by the jurisdictional owner. Periodic closures are allowed as long as the traveling public is adequately informed about road closures.

**10. Q: Who is liable for the safety of travelers on a National Scenic Byway?**

A: The liability responsibility does not change if the corridor receives National Scenic Byway designation. Responsibility for road maintenance and operation remains with the pre-designation jurisdictional owner.

**11. Q: Does designation or the Corridor Management Plan require that certain laws or regulations be enforced?**

A: No, the Corridor Management Planning document has no regulatory authority. It is primarily a collection of issues and goals that have been mutually established by corridor residents.